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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,842	05/17/2006	Virginia Ruth Pinney	31923	5737

7590
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P O Box 16446
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03/05/2008

EXAMINER

CHEN, CATHERYNE

ART UNIT	PAPER NUMBER
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1655

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,842	Applicant(s) PINNEY, VIRGINIA RUTH	
	Examiner CATHERYNE CHEN	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,3,4,6,13,18,23,27-29,43,45,46,49,50,53-59,68,75,80,84,88,103,105,114,116,126,132,134-138,140-144,146,149,153 and 155-164.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 105,126,132,134-138,140-144,146,149,153.

Continuation of Disposition of Claims: Claims rejected are 1, 3-4,6,13,18,23,27-29,43,45,46,49,50,53,59,68,75,82,84,88,103,116,155-164.

DETAILED ACTION

The Amendments filed on Dec. 4, 2007 has been received and entered. Currently, Claims 1, 3-4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 132, 134-138, 140-144, 146, 149, 153, 155-164 are pending. Claims 1, 3-4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 116, 126, 155-164 are examined on the merits.

Election/Restrictions

Applicant's election of Group I (Claims 1, 4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 155-159, newly added 160-164), the species frankincense, extract of roses, extract of Canaga, extract of Piper, and extract of Bursera, vanillin, alkyl, viscous fluid, in the reply filed on June 7, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). As to why Claim 105 was not examined, it is not elected because a viscous fluid carrier, Claim 116, was elected.

Claims 105, 114, 126, 132, 134-144, 146, 149, 153 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 7, 2007.

Response to Arguments

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 103, 116, 159-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sott (US 2002/0081341 A1) for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that Sott does not teach the combination of extracts and oils cannot be carriers.

The reference does teach that each of the claimed ingredients is suitable for combination in a pharmaceutical composition. Sott teaches essential oil formulation (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous, chemically intrinsic property, and serve as carriers in pharmaceutical compounds. The different oils serve as carriers for each other, where they can be dissolved as a mixed solution. As to the toxicity, the chemicals would be adjusted according to its use. Thus, an artisan of ordinary skill would be reasonably expected that the claimed ingredient could be combined together to produce a single pharmaceutical product. This reasonable expectation of success would motivate the artisan to combine the claimed ingredients together into a single composition.

As to the combination of ingredients, while the reference might not teach a specific embodiment with the claimed ingredients, the reference does list these ingredients as being appropriate for combination into a dietary food used for performing

health. As discussed in *KSR International Co. v. Teleflex Inc.*, 550 U.S.--, 82 USPQ2d 1385 (2007) it is considered obvious to combine prior art elements known to be used in equivalent fields of endeavor together into a single combination. The reference clearly shows that the claimed ingredients were known to be used in equivalent fields of endeavor; thus, it is considered obvious to combine them together.

Claims 1, 3-4, 6, 13, 18, 23, 27, 28, 29, 45, 49, 59, 68, 75, 80, 84, 88, 116, 157, 159-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sott (US 2002/0081341 A1) as applied to claims 1, 3-4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 116, 159-161 above, and further in view of Lambrecht et al. (US 2001/0005711 A1) for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the references do not teach the combination of extracts, oils cannot be carriers, and Lambrecht et al. does not teach fragrance.

Sott does teach that each of the claimed ingredients is suitable for combination in a pharmaceutical composition. Sott teaches essential oil formulation (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous, chemically intrinsic property, and serve as carriers in pharmaceutical compounds. The different oils serve as carriers for each other, where they can be dissolved as a mixed solution. As to the toxicity, the chemicals would be adjusted according to its use. Thus, an artisan of ordinary skill would be reasonably expected that the claimed ingredient could be combined together to produce a single pharmaceutical product.

Art Unit: 1655

This reasonable expectation of success would motivate the artisan to combine the claimed ingredients together into a single composition.

As to the combination, while the reference might not teach a specific embodiment with the claimed ingredients, the reference does list these ingredients as being appropriate for combination into a dietary food used for performing health. As discussed in *KSR International Co. v. Teleflex Inc.*, 550 U.S.--, 82 USPQ2d 1385 (2007) it is considered obvious to combine prior art elements known to be used in equivalent fields of endeavor together into a single combination. The reference clearly shows that the claimed ingredients were known to be used in equivalent fields of endeavor; thus, it is considered obvious to combine them together.

Lambrecht et al. teaches vanilla extract in fragrances (paragraph 0013) because of their olfactory properties (paragraph 0003).

The references also do not specifically teach combining frankincense, rose, cananga, piper, bursera and vanillin together. The references do teach that they are essential oils in fragrances (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, it would be obvious to combine all of the claimed ingredients because they are taught in the reference to have the same purpose.

Claims 1, 3-4, 6, 13, 18, 23, 27, 43, 45, 49, 50, 53, 59, 68, 75, 80, 84, 88, 103, 116, 156, 157, 158-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Sott (US 2002/0081341 A1) applied to claims 1, 3-4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 103, 116, 159-161 above, and further in view of Bramwell et al. (US 3884842) for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the references do not teach the combination of extracts and there is no reason to combine the ingredients.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sott teaches essential oil formulation in aromatherapy (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous and serve as carriers in pharmaceutical compounds. Bramwell et al. teaches perfume compositions of odoriferous aldehydes, benzyl benzoate, amyl salicylate (column 3, lines 36, 44).

The references also do not specifically teach combining the claimed ingredients together. The references do teach that the ingredients are used in perfumes (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, it would be obvious to combine the claimed ingredients together because they are taught in the reference to have the same purpose.

Claims 162-164 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sott (US 2002/0081341 A1) and Parnell (US 5248501).

Sott teaches essential oil formulation (paragraph 0002), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous and serve as carriers in pharmaceutical compounds. However, it does not teach Piper auritum.

Parnell teaches oil extracted from Yerba Santa (Piper auritum) as excipient (column 1, lines 48-53). Excipients are a form of carrier. Thus, an artisan of ordinary skill would reasonably expect that extracts of Yerba Santa could be used as the types carrier for essential oils taught by the references. This reasonable expectation of success would motivate the artisan to use Yerba Santa in the reference composition. Thus, using Yerba Santa is considered an obvious modification of the references.

Applicant claimed that there is unexpected result of at least one embodiment of the claimed invention.

This is not found because there are no labels for the experiments in Fig. 3. Other embodiments compared different end points, which are difficult to interpret in order to reach a conclusion of unexpected results. The data need to be presented in another way.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1655

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen,
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Patent Examiner

Art Unit: 1655

Art Unit 1655

/Susan Coe Hoffman/
Primary Examiner, Art Unit 1655